

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 10, 2000 Session

**NANCY BYRD v. FRESH AIR SYSTEMS, INC. (Formerly
RITTENHOUSE, INC.), ET AL.**

**Direct Appeal from the Circuit Court for Grainger County
No. 6650 O. Duane Sloan, Circuit Judge**

**No. E2000-00481-WC-R3-CV - Mailed - March 13, 2001
FILED: JUNE 13, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court found the plaintiff sustained a permanent psychological or mental impairment as a result of a confrontation between her and a supervisor of the defendant. The trial judge found the plaintiff sustained a fifty percent permanent partial disability to the body as a whole as a result of the confrontation. The defendant says the evidence preponderates against the finding. We reverse the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Reversed

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which HOUSTON M. GODDARD, SP. J., and WILLIAM H. INMAN, SR. J., joined.

Weldon E. Patterson, Knoxville, Tennessee, for the appellants, Fresh Air Systems, Inc. (Formerly Rittenhouse, Inc.) and Travelers Insurance Company.

Norbert J. Slovis, Knoxville, Tennessee, for the appellee, Nancy Byrd.

OPINION

The trial court found the plaintiff sustained a permanent psychological or mental impairment as a result of a confrontation between her and a supervisor of the defendant.

The trial judge found the plaintiff sustained a fifty percent permanent partial disability to the body as a whole as a result of the confrontation. The defendant says the evidence preponderates against the finding. We reverse the judgment of the trial court.

Plaintiff's Biography

The plaintiff was fifty-six years of age at the time of trial. She has a high school education and some business college training. The plaintiff is divorced and lives alone. She worked for the defendant for seven years prior to the confrontation.

Facts

The record reveals the plaintiff began to have difficulty at work with a her new departmental supervisor approximately one year prior to the confrontation between the plaintiff and the supervisor, which occurred on December 5, 1995. The plaintiff had been "written up" seven times because of her job performance, but no disciplinary action was taken. Because the plaintiff felt she was being discriminated against by the supervisor, she began keeping a log concerning their relationship.

The defendant does not deny that a confrontation took place between the supervisor and the plaintiff. The plaintiff testified the supervisor was angry and confrontational and that she attempted to explain to him he would order her to "shut-up." The plaintiff testified that was done in a loud voice which could be overheard by the other employees, who were apparently ten to twenty feet away. Evidence from other employees supported the plaintiff's testimony. The supervisor conceded he confronted the plaintiff in front of the other employees rather than talking with her in an office. He testified he told the plaintiff to shut-up approximately three times. He said he did this because the plaintiff would not listen to him and was being insubordinate. He conceded the other employees could probably hear the conversation.

The evidence shows the plaintiff began suffering some emotional stress prior to the December 5, 1996, confrontation; the stress caused her to give up some charity work at a senior citizens' center.

Medical Evidence

Dr. Bruce Q. Green, a psychiatrist, began treating the plaintiff after the December 5, 1996, incident. He found she was suffering from interpenetrating major depression as a result of the incident and that at the time of her testimony she suffered major depression. Dr. Green was of the opinion the incident in December 5, 1996, was a "directly precipitating" cause of the plaintiff's condition. Dr. Greene found the plaintiff's condition was permanent and resulted in a sixty percent impairment to the body as a whole.

Dr. Ben Bursten, a psychiatrist, saw the plaintiff for evaluation on September 29, 1999. Dr. Bursten testified the plaintiff did not suffer from depression. He would not confirm or refute the diagnosis made by Dr. Greene because of the time lapse between the evaluation and Dr. Green's treatment. Dr. Bursten could not say whether within a reasonable degree of medical certainty that the plaintiff did or did not suffer a psychiatric impairment.

Discussion

In *Veronica Goodloe v. State of Tennessee*, 2001 WL 43655, _____ S.W.3rd _____ (Tenn. 1991) the Court stated, while citing the following cases:

A mental injury is compensable under the workers' compensation scheme when it results from an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety. *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 n. 10 (Tenn. 1999). However, "worry, anxiety or emotional stress of a general nature" is not compensable, *see Allied Chem. Corp. v. Wells*, 578 S.W.2d 369, 372 (Tenn. 1979), because the workers' compensation system "does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment." *See Jose v. Equifax, Inc.*, 556 S.W.2d 82, 84 (Tenn. 1977). Further, a mental injury that results from the accumulation of normal job-related stress is not compensable, *see Gatlin v. City of Knoxville*, 822 S.W.2d 587, 591-92 (Tenn. 1991), because "[e]motional stress, to some degree, accompanies the performance of any contract of employment." *See Allied Chem. Corp. v. Wells*, 578 S.W.2d 369, 373 (Tenn. 1979). Thus, "the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty." *Gatlin v. City of Knoxville*, 822 S.W.2d at 592.

The Court in *Goodloe* cited also the case of *Clevenger v. Plexco*, 614 S.W.2d 356 (Tenn. 1981), a case in which an employee was harshly reprimanded and informed that he would be fired unless he improved his performance. The employee then suffered a nervous breakdown. The Court held the plaintiff in *Clevenger* was not entitled to recover and further held the psychological injury was not compensable because the incident fell within the rule that an injury by accident does not embrace every stress or strain or undesirable experience encountered in the work place.

We find the facts in this case brings it within the rule as expressed in the cases cited above and conclude the plaintiff's mental illness is not a compensable injury under the provisions of the Workers' Compensation Act. We, therefore reverse and dismiss this case.

The cost of this appeal is taxed to the plaintiff.

JOHN K. BYERS, SENIOR JUDGE

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**Circuit Court for Grainger County
No. 6650**

No. E2000-00481-SC-WCM-CV - filed: June 13, 2001

JUDGMENT

This case is before the Court upon Nancy Byrd's motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied;

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Nancy Byrd, for which execution may issue if necessary.

IT IS SO ORDERED.